COMPLAINT INVESTIGATION WASHOE COUNTY SCHOOL DISTRICT (#WA020810)

INTRODUCTION

On 2/8/10, the Nevada Superintendent of Public Instruction received a complaint dated 2/8/10 from parents alleging violations in the special education program of a student with disabilities attending Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the student's individualized educational program (IEP) was not implemented in the 2009/2010 school year because: 1) WCSD unilaterally changed the student's placement when she was removed from her strings class and placed in study hall for weeks while her violin was being repaired and did not provide the parents with prior written notice (PWN) of the changes in placement out of and back into strings class and 2) occupational therapy (OT) consultative services were not provided to assist the student when she had difficulty holding the violin in strings class.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE):

Issue 1: Whether WCSD complied with federal and state requirements regarding placement when the student was removed from the strings classroom on four occasions to complete her homework and specifically, did this removal constitute a change of placement necessitating parental participation and prior written notice.

Issue 2: Whether WCSD complied with federal and state requirements to implement the student's IEP, specifically with respect to providing OT consultation to the strings teacher.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parents
- Principal
- Strings teacher
- Occupational therapist (OT)
- · Case manager
- Paraprofessional

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- 5/18/09 IEP
- 1/5/10 IEP
- Email from strings teacher to parent on approximately 1/13/10
- Email from OT to strings teacher dated 1/13/10
- Memo from case manager dated 2/24/10
- OT Home Note/Communication Log (OT Log) from 9/28/09 through 2/8/10
- OT Progress Reports for 1st and 2nd Quarters of 2009/2010 school year

The investigation team also reviewed the following authorities:

- Nevada Administrative Code (NAC), Chapter 388
- IDEA Regulations, 34 CFR Part 300
- U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS) Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak (12/1/09).
- United States Supreme Court Decision, Honig v. Doe (484 U.S. 305; 108 S. Ct. 592 (U.S.S.C.

1998)) and codified in the IDEA AT 20 U.S.C. Section 1415(k); 34 C.R.R §300,536).

FINDINGS OF FACT

This investigation involved a middle school student with autism eligible for special education services, who attended WCSD during the 2009/2010 school year. A review of documents, as well as interviews with the parents, principal, strings teacher, case manager, paraprofessional and OT revealed the following facts.

The student's 5/18/09 and 1/5/10 IEPs required that the student be educated in "regular class and special education class combination" with 90% of her time spent in the regular education environment. All of the student's classes were regular education classes with the remaining 10% spent in OT, speech and language, and counseling. The IEPs had goals and objectives in the following areas: mathematic computation, language arts, self-monitoring behavior, communication skills and pragmatic abilities. There were no goals and objectives, nor any accommodation or modifications that specifically addressed the use of a violin.

The student was enrolled in a strings class, an elective as part of her regular class schedule, during the 2009/2010 school year. In strings class, the student played a district-owned violin. The strings class period was 75 minutes long. From the beginning of the 2009/2010 school year through 12/16/10, there were 35 strings classes scheduled. The student attended 34 of those sessions and was absent for one. The strings teacher reported that on 12/16/10 the student dropped the violin from her lap during class and the violin broke. The strings teacher and the principal reported that when district-owned instruments are broken they are sent for repair, and there was not a surplus instrument available for the student.

The student stayed in the strings class throughout the 12/16/10 class period. Thereafter, prior to her violin being repaired, the student had strings class scheduled on 12/18/09, 1/5/10, 1/7/10, 1/11/10, 1/13/10, 1/15/10, and 1/21/10. The student stayed in the strings classroom on 12/18/09, 1/5/10, and 1/21/10.

The strings teacher reported that the paraprofessional asked her if it would be okay for the student to leave the classroom on 1/7/10, 1/11/10, 1/13/10 and 1/15/10 to work on homework assignments. On each of these occasions the strings teacher gave permission for the student to leave the classroom. The strings teacher stated that although students generally stay in the strings class while their instruments are being repaired, she does permit them to leave to work on other school assignments in the library or other classrooms when requested. The paraprofessional stated that she asked the student if she wanted to leave the strings class to work on the assignments before she (the paraprofessional) asked permission from the strings teacher on the above-mentioned four occasions. On each occasion the student indicated that she did want to leave the classroom to do her homework.

On 1/25/10 the violin was returned and the OT observed the student with the violin. On 1/28/10 the student resumed regular participation in class with her violin. The student had remained enrolled in the strings class during the entire time the violin was being repaired.

The case manager and the paraprofessional reported that on 1/11/10 the student worked with the paraprofessional completing some homework with some special education students present. On 1/7/10, 1/13/10 and 1/15/10 the case manager and the paraprofessional reported that the paraprofessional worked with the student in an empty classroom while the student completed her homework assignments. The principal and the strings teacher reported the school does not have a study hall.

The parents reported that they were notified on 12/16/10 that the violin was broken and needed repair but were not told what the student would do during the scheduled strings class pending the repair of the violin. The parents reported that they first learned the student was not attending strings class after the violin broke, when the student notified them in January that she was no longer attending the strings class and instead going to study hall because her violin was broken.

The IEPs provided for OT via consultative and direct services throughout the school campus. The only description in the IEPs of what specific areas the OT would address was in the "Justification for Placement Involving Removal from Regular Education Environment" (Justification for Placement) section of the IEPs. The Justification for Placement stated "it is felt that the student would continue to benefit from occupational therapy services... to assist and support her and her teachers in the achievement of her fine motor/handwriting related IEP goals/objectives". The 5/18/09 IEP had one goal/objective addressing fine motor/handwriting related goals/objectives. The 1/5/10 IEP did not have any goals/objectives addressing fine motor/handwriting related goals/objectives. There was no reference to the development of skills to play the violin in either of the IEPs.

The parents stated that the OT should have consulted with the strings teacher and/or worked with the student to develop the fine motor skills and strength she needed to handle a musical instrument. There was no dispute as to whether the direct or consultative services were provided by the OT as required by the IEP other than with relation to the provision of consultative services to the strings teacher.

The strings teacher reported to the complaint investigation team that the student had dropped the violin from her lap four times prior to 12/16/09. She stated that the student was able to hold the violin while playing it and that in each instance, including the 12/16/09 instance, the violin fell off the student's lap while she was sitting in class but not while she was attempting to play the violin. The strings teacher and the OT reported that they believed the student had the dexterity and strength required to play the violin but had difficulty with getting the finger position correct as did a lot of students. Finger position is part of the instruction for all students in the strings class.

The OT summary notes indicate that the OT observed the student on 9/28/09 in the strings class and again on 1/25/10 when the violin was repaired. The OT reported to the complaint investigation team that she did not observe the student having difficulty with fine motor skills on either occasion.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether WCSD complied with federal and state requirements regarding placement when the student was removed from the strings classroom on four occasions to complete her homework and specifically, did this removal constitute a change of placement necessitating parental participation and prior written notice.

This complaint concerned an allegation that the district did not provide the parents with a proper PWN when the student was unilaterally removed from her strings class when her violin was broken and then again when she was moved back into her strings class when the violin was repaired.

State regulations at NAC §388.300(7) state that "a public agency shall notify the parents of a pupil with a disability...within a reasonable time before any proposed or refused action regarding the: (a) Placement of the pupil; ...".

State regulations at NAC §388.245(6) state "The placement of a pupil with a disability must be determined at least annually by a group of persons, including...the parents of the pupil...".

In this case, the student broke her violin on 12/16/09. There were seven strings classes after that prior to the student's violin being repaired and returned to class. The student was enrolled in the strings class during this period. The student was present in the strings classroom for three of those class periods. The student, during four class periods, 1/7/10, 1/11/10, 1/13/10, and 1/15/10 left the strings classroom and did homework. The student agreed to the removal for this purpose.

In addressing a health concern during a flu outbreak in 2009, the United States Department of Education (USED) compared the IDEA requirements during a temporary removal of a student with disabilities.

characterized as generally 10 consecutive school days or less, to the requirements during a removal of long duration, characterized as generally more than 10 consecutive school days. The USED determined that a temporary removal with alternative provision of services is not considered a change in placement requiring compliance with the IDEA change of placement requirements. (53 IDELR 269 (OSERS 2009)). This interpretation is consistent with longstanding case law, as evidenced in the interpretation of a disciplinary change of placement established in the United States Supreme Court Decision, Honig v. Doe (484 U.S. 305; 108 S. Ct. 592 (U.S.S.C. 1998)) and codified in the IDEA AT 20 U.S.C. Section 1415(k); 34 C.R.R §300,536). Based on the temporary nature of the removal, its duration of less than ten days and the provision of instructional services during that time, the investigation team determined it was reasonable to conclude that the removal of the student for four consecutive strings class sessions was not a change of placement. Therefore, there was no requirement that the district provide for parental participation or prior written notice with respect to the decision to allow the student to study outside of the strings classroom on these four occasions.

Therefore, the investigation team concluded that WCSD complied with state and federal regulations when it permitted the student to leave the strings classroom to complete her homework and that this move did not constitute a change of placement necessitating parental participation in the decision and the issuance of a prior written notice.

Issue 2: Whether WCSD complied with federal and state requirements to implement the student's IEP, specifically with respect to providing OT consultation to the strings teacher.

This complaint concerned an allegation that the OT did not provide consultative services to the strings teacher so that the student could develop the fine motor skills to play the violin.

State regulations at NAC §388.281.6(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee."

In this case there were no goals, objectives or accommodations addressing the ability to play the violin in the student's IEPs, nor was there any requirement that the OT provide consultative or direct services specifically to the strings teacher and/or to the student to assist her in playing the violin. The only requirement in the IEPs with relation to the specific services the OT was to provide was in the Justification Section of the IEP. That IEP requirement was to assist and support the student and her teachers in the achievement of her fine motor/handwriting related IEP goals/objectives "throughout the school campus".

Because there was no requirement to provide OT services to address the skills to play the violin, the district was not obligated to provide OT consultative services to the strings teacher to support the student's capacity to play the violin.

Therefore, the investigation team concluded that WCSD complied with state and federal regulations with respect to the provision of OT consultation services to the strings teacher.